

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HERITAGE REALTY MANAGEMENT, INC.,	)	CASE NO. CA04-333 ERIE
	)	
Plaintiff,	)	JUDGE SEAN McLAUGHLIN
	)	
vs.	)	
	)	
JOHN ALLIN d/b/a ALLIN COMPANIES,	)	
	)	
Defendant.	)	

**DEFENDANT'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
PURSUANT TO THE FEDERAL RULES OF CIVIL PROCEDURE**

Defendant John Allin d/b/a Allin Companies ("Defendant") submit the following objections and responses to Plaintiff Heritage Realty Management, Inc.'s ("Plaintiff") Interrogatories and Requests for Production of Documents Pursuant to the Federal Rules of Civil Procedure as follows:

**GENERAL OBJECTIONS**

The following objections are applicable to all interrogatories and requests for production of documents ("Requests"), are incorporated by reference into each and will therefore not be repeated.

1. Defendant objects to these Requests to the extent they seek to impose obligations and requirements not required by the Federal Rules of Civil Procedure.
2. Defendant objects to these Requests to the extent they seek information and/or production of documents protected from disclosure by the attorney-client privilege or the attorney work product doctrine and inadvertent production of such documents shall not be deemed a waiver of any privilege with respect to such documents or information.

**EXHIBIT**

**A**

3. Defendant objects to the definition of the term "Agreement" used in Plaintiff's Discovery Requests as being vague and ambiguous. Plaintiff's responses to Interrogatories or Document Production Requests substitute the term "Contract" for "Agreement" and refers to the written document fully executed on October 12, 2004 between Heritage Realty Management, Inc. John Allin d/b/a Allin Companies.

4. Defendant makes his responses to the best of his and his agents' present knowledge, information and belief and reserves the right to revise or amend any of the responses based upon additional or different non-privileged information that discovery or additional investigation may disclose. Defendant further reserves all objections or other questions as to competency, foundation, relevance, materiality or admissibility in evidence of the responses and any information or document provided herein or pursuant thereto.

5. The General Objections are continuing obligations throughout each of the responses herein and are incorporated in each of the responses as if fully set forth in each response.

## INTERROGATORIES

1. State the date when Defendant signed the Agreement.

ANSWER: Defendant signed the Contract on October 4, 2004.

2. State the date when Defendant believes the Agreement went into effect.

ANSWER: The Contract was fully executed on October 12, 2004, but it was necessary for Defendant to perform some of the obligations that were included in the Contract, and he did begin performing those obligations of the Contract, on August 13, 2004.

3. State the date when Defendant received notice of termination of the Agreement.

ANSWER: Defendant states that it received notice of termination of the Contract on November 4, 2004.

4. Itemize all expenses which Defendant believes he is entitled to receive credit under the terms of the Agreement. (List the type of expense, the date it was incurred, the date it was paid, the person or entity to who it was paid and the amount of the expense).

ANSWER: Refer to documents marked with Bates Nos. 00001-00004. For the dates travel expenses were incurred refer to documents marked with Bates Nos. 00756-00822. The person or entity to whom the money was paid is contained in the documents listed herein with the exception of the supply costs. All supplies were purchased through Staples. Further investigation is ongoing for documents relating to these purchases and responses to these Requests may be supplemented.

5. State whether any of the expenses listed in the answer to the previous Interrogatory went to individuals or entities which are affiliated with and/or related to the Defendants. (If answered in the affirmative, identify the expense and how the entity is affiliated or related to the Defendants).

ANSWER: Objection. Defendant objects to this Interrogatory because it is vague and ambiguous. Without waiving this objection, refer to documents marked with Bates Nos. 00001-00004.

6. Itemize in detail all funds the Defendants received from the Plaintiff pursuant to the Agreement which are claimed to have been expended in furtherance of the Agreement.

ANSWER: Refer to document produced in response to Interrogatory No. 5.

7. List all work, services performed and all equipment and materials supplied as referred to in Defendant's Fourth Affirmative Defense, (including the date of service, the type of service, the location of service, the recipient of the service, the value of the service, and the date of payment).

ANSWER: Refer to document produced in response to Interrogatory No. 4. Also refer to documents marked with Bates Nos. 01321-02578, documents marked with Bates Nos. 00293-00458, and documents marked with Bates Nos. 00005-00292. Services performed in connection with preparing documents related to Requests for Proposals were performed at Defendant's offices.

8. List all documents and records both tangible and electronic which reflect any expenses of the type referred to in the Defendant's Fourth Affirmative Defense.

ANSWER: Refer to documents produced in response to Interrogatory No. 7.

9. Itemize in detail all work performed by Defendant in connection with the bidding process which lead to execution of the Agreement, including type of work, the date work was done, the person or entity who did the work, and the cost to Defendant of doing the work.

ANSWER: Objection. Defendant objects to this Interrogatory because the term "bidding process" is vague, ambiguous and undefined. Without waiving this objection, Defendant denies that a bidding process, as he understands that term, lead to the execution of the contract.

10. List all action taken by Defendant to mitigate damages after receipt of the notice from Plaintiff concerning termination of the Agreement.

ANSWER: Defendant terminated two field managers hired and trained for the purposes of fulfilling its obligations to Heritage. Defendant also reclaimed vehicles that had been given to these field managers after Defendant hired them.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. All documents and correspondence which support any credits or setoffs the Defendants believe they are entitled to under the Agreement.

ANSWER: Refer to documents produced in response to Interrogatory Nos. 4 and 7.

2. All documents and correspondence which support the allegations contained in the Defendant's Fourth Affirmative Defense.

ANSWER: Refer to documents produced in response to Interrogatory Nos. 4 and 7.

3. All checks which were used to pay any bill(s) for which the Defendants contend they are entitled to a credit or set off under the Agreement.

ANSWER: Defendant does not receive copies of cancelled checks from its bank and therefore does not have possession of the checks requested. Refer to documents produced in response to Interrogatory No. 4 for documentation relating to the credit or set off to which Defendant contends it is entitled under the Contract.

4. All documents and correspondence relating to the creation of the subject Agreement or its execution or performance.

ANSWER: Objection. Defendant objects to this request because it is vague, overbroad, unduly burdensome and incomprehensible. Without waiving this objection Defendant is producing drafts of the Contract. Refer to documents marked with Bates Nos. 00462-00755.

5. All documents and correspondence between the Defendant and third parties relating to services or goods provided for which the Defendant believes they are entitled to a credit or setoff:

ANSWER: Refer to documents produced in response to Interrogatory Nos. 4 and 7.

6. Any and all documents and correspondence, other than the Agreement, which Defendant believes forms the agreement between the parties with respect to the matter which forms the subject of this lawsuit.

ANSWER: Defendant does not contend that any documents other than the Contract form the agreement between the parties with respect to the matter which forms the subject of the lawsuit.

7. All documents and correspondence relating to the bidding process which lead to the execution of the Agreement.

ANSWER: Objection. See response to Interrogatory Number 9.

As to Objections:



Craig Markham, Esq. (38531)  
Elderkin, Martin, Kelly & Messina  
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Erie, Pennsylvania 16501  
Telephone (814) 456-4000  
Facsimile (814) 454-7411

Frank R. DeSantis, Esq. (0030954)  
Thompson Hine LLP  
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127 Public Square  
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Telephone (216) 566-5500  
Facsimile (216) 566-5800

*Co-Counsel for Defendant John Allin  
d/b/a Allin Companies*

**CERTIFICATE OF SERVICE**

A copy of the foregoing *Defendant's Objections and Response to Plaintiff's Interrogatories and Requests for Production of Documents Pursuant to the Federal Rules of Civil Procedure* was served via hand delivery this 18<sup>th</sup> day of May, 2005 to the following:

John R. Wingerter, Esq.  
John Rogala Evanoff, Esq.  
Carney & Good  
254 West 6th Street  
Erie, Pennsylvania 16507-1398

*Counsel for Plaintiff Heritage Realty Management, Inc.*

  
\_\_\_\_\_  
Craig A. Markham, Esq.  
*One of the Attorneys for Defendant  
John Allin d/b/a Allin Companies*

**EXHIBIT**

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rtip data entry	\$ 6,175.00	ops mgr - L. Edwards
Regional Manager-SPs, Site Reviews, Budgeting	\$ 3,800.00	rm - Smallwood
Field manager-SPs, Site Reviews	\$ 760.00	fm - J. Casey
Field manager-SPs, Site Reviews	\$ 950.00	fm - J. terrace
Regional Manager-SPs, Site Reviews, Budgeting	\$ 9,500.00	rm - R. Hrovat
Regional Manager-SPs, Site Reviews, Budgeting	\$ 9,500.00	fm - R. Santoro
Production-Site Visits, Production Maps	\$ 2,375.00	prod coord- D. Gallagher
Production-Production Maps & Binders	\$ 9,000.00	prod - T. Parcura
Production-Number Calculations	\$ 5,200.00	prod - C. Zeigowski
Production-SPs, Field Managers, Training, Budgeting	\$ 3,800.00	prod - R. Rieder
Special Accounts Manager-Estimating, Point of Contact Info., Training	\$ 9,500.00	sac - B. Marshall
Bus. Development	\$ 33,000.00	bus devel - J. Vernon
Bus. Development	\$ 22,500.00	bus devel - J. Allin
Human Resources	\$ 45,000.00	h.r. - P. Allin
Accounting	\$ 1,140.00	accounting - M. Suleski
new hire -field manager	\$ 9,500.00	Dave Dziluban -Chicago
new hire -field manager	\$ 9,500.00	Bryan Rohe -Des Moines
new hire -field manager	\$ 9,500.00	Duane Haataja-Minneapolis

JA00002

Expense	Date Incurred	Date Paid	Entity Paid	Amount of Expense	Affiliation to Allin Co/SMG	Comments
Flight to Ft Lauderdale-John Allin	1/21/2004	1/21/2004	Northwest Airlines	233.9	same	
Flight to Ft Lauderdale-Jeff Vernon	1/21/2004	1/21/2004	Northwest Airlines	207.9	same	
Ground Transportation	2/22/2004	2/22/2004			same	
Hotel -JA & JV	2/22/2004	2/22/2004	Harbor Beach Resort & Spa Marriott	\$0	same	\$319.00 paid by Heritage

JA00003

Expense	AMOUNT	TOTAL
AIRFARE	\$ 1,037.60	
	\$ 64.90	
	\$ 181.70	
	\$ 221.70	
	\$ 102.60	\$ 1,608.50
HOTEL	\$ 64.99	
	\$ 82.01	
	\$ 99.00	
	\$ 220.00	
	\$ 220.00	\$ 686.00
FOOD	\$ 150.00	
	\$ 125.00	
	\$ 125.00	
	\$ 125.00	\$ 525.00
GROUND	\$ 25.00	
	\$ 20.00	
	\$ 25.00	\$ 70.00
TRANS. TOTAL		\$ 2,889.50
LABELS	\$ 135.00	\$ 135.00
ENV	\$ 110.00	
	\$ 65.00	\$ 175.00
PAPER	\$ 78.00	\$ 78.00
POSTAGE	\$ 1,386.75	\$ 1,386.75
COPIES	\$ 537.50	\$ 537.50
FAXING	\$ 125.00	\$ 125.00
SITE DATA ENTRY	\$ 180.00	
	\$ 180.00	\$ 360.00
PHONE CALLS	\$ 1,080.00	
	\$ 1,080.00	
	\$ 1,080.00	
	\$ 1,080.00	\$ 4,320.00
RFP DATA ENTRY	\$ 360.00	
	\$ 6,175.00	\$ 6,535.00
MGMT/PRODUCTION	\$ 3,800.00	
	\$ 760.00	
	\$ 950.00	
	\$ 9,500.00	
	\$ 9,500.00	
	\$ 2,375.00	
	\$ 9,000.00	
	\$ 5,200.00	
	\$ 3,800.00	
	\$ 9,500.00	
	\$ 33,000.00	
	\$ 22,500.00	
	\$ 45,000.00	
	\$ 1,140.00	
	\$ 9,500.00	
	\$ 9,500.00	
	\$ 9,500.00	\$ 184,525.00
SUPPLIES/PERSONNEL TOTAL		\$ 198,177.25
GRAND TOTAL		\$ 201,066.75

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HERITAGE REALTY MANAGEMENT, )  
INC., )  
Plaintiff )  
v. ) CIVIL ACTION NO. 04-333 ERIE  
JOHN ALLIN d/b/a ALLIN )  
COMPANIES and SNOW MANAGEMENT )  
GROUP, )  
Defendant )

HEARING ON PLAINTIFF'S MOTION TO COMPEL

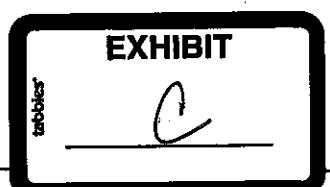
Proceedings held before the HONORABLE  
SEAN J. McLAUGHLIN, U.S. District Judge,  
in Judge's Chambers, U.S. Courthouse, Erie,  
Pennsylvania, on Wednesday, November 23, 2005.

APPEARANCES:

RICHARD A. LANZILLO, Esquire, appearing on  
behalf of the Plaintiff.

CRAIG A. MARKHAM, Esquire, appearing on behalf  
of the Defendant.

Ronald J. Bench, RMR - Official Court Reporter



P R O C E E D I N G S

(Whereupon, the proceedings began at 10:58 a.m., on Wednesday, November 23, 2005, in Judge's Chambers.)

6 THE COURT: We have a motion to compel here.  
7 There's a request for various documents that were identified at  
8 our previous get-together. My understanding is they have not  
9 yet been produced, is that right?

10 MR. LANZILLO: That's correct, your Honor. Judge,  
11 the need for documents is twofold. There was some thought that  
12 if those documents would be produced, Mr. Allin indicated this,  
13 it would be difficult to come up with them, that that might  
14 facilitate further settlement discussions. At the same time  
15 failing that, we have until December 10th to complete our  
16 depositions, we really can't even get them started until we  
17 take a look at those records.

18 THE COURT: What's going on with these records?

19 MR. MARKHAM: Well, as far as I know -- I've been in  
20 communication with Mr. Allin principally by e-mail since the  
21 October 31st conference we had. My recollection is at that  
22 conference it was agreed he'd try to produce these records in  
23 two weeks. We're a week or so late in doing that. After I got  
24 the motion late yesterday, I e-mailed him with the motion, he  
25 indicated that he was out of the office, people there were

1 working on this. This morning I actually called his office,  
2 he's not there, he's in Canada somewhere, I did speak with his  
3 wife, who's been kind of the office manager. Who indicates  
4 that the records, she's not involved in collecting them, she's  
5 not sure they exist. She is now trying to communicate with her  
6 husband, who's apparently in Canada somewhere and not expected  
7 back until late, midnight. I sent him an e-mail, also, when I  
8 got the call this morning. I've not received them, the records  
9 that we were talking about at the last meeting.

10 THE COURT: That were the subject of the request for  
11 production?

12 MR. MARKHAM: Right. There was a request even  
13 before Attorney Lanzillo became involved for production, which  
14 was responded to, we produced like a whole box of documents. I  
15 understand he wants more. If they exist, he certainly is  
16 entitled to them.

17 THE COURT: When does discovery end, December 10th?

18 MR. LANZILLO: December 10th. What was produced,  
19 judge, was a schedule purporting to be itemized expenses  
20 incurred relative to this contract. The lion's share, as I  
21 recall, of the expenses that were attributable to many, many  
22 hours of work that was purportedly done by various people in  
23 this organization. And Mr. Allin indicated we have the records  
24 to document what was done and that's how we followed up, and  
25 the basis on which the court directed further production.

1                   THE COURT:  Wasn't there -- I'm just trying to  
2 figure out how to fashion this order.  Wasn't there some  
3 original belief on the part of Mr. Allin that these records  
4 existed?

5                   MR. MARKHAM:  My recollection is that he did  
6 indicate that he thought they exist.

7                   THE COURT:  In some form or fashion?

8                   MR. MARKHAM:  Right.  When I talked to his wife  
9 today, this is really the first she heard of this document  
10 request, she wasn't convinced that they do exist.  Although --

11                  THE COURT:  Well, I'm going to enter an order here  
12 presently that they be produced by a certain date.  Failing  
13 that -- well, put it this way.  After a reasonable and diligent  
14 search, parties are always entitled to say we don't have any  
15 records that would address the issue.  And you can't get what  
16 they don't have.  If that's the answer, that's the answer.

17                  MR. LANZILLO:  I understand, judge.  Mr. Allin has  
18 gone on record, not just saying the documents exist, but  
19 saying -- quantified the number of hours that were devoted to  
20 specific tasks.  Which unless someone was working from a  
21 remarkable memory, makes me question where he came up with  
22 those numbers.  But that can be the subject of further  
23 discussion at a later date.

24                  THE COURT:  Like a deposition.  Put it this way.  If  
25 the records exist and they're not produced by a date certain,

1 I'm going to preclude any proof on the issue, which is  
2 essentially the functional equivalent to almost directing a  
3 verdict in favor of them on their damage issue. On the other  
4 hand, if they don't have the records, then they can't be  
5 faulted for that. And it just becomes a question of weight to  
6 the testimony, I suppose. Do you follow what I'm saying?

7 MR. MARKHAM: I believe I do, judge. If they exist  
8 or they're not produced in accordance with this order --

9 THE COURT: The sanction is going to be that you're  
10 going to be precluded from defending on the basis of these  
11 other startup costs. Which essentially is going to be that's  
12 the case.

13 MR. MARKHAM: If the documents don't exist, that  
14 issue rises and falls with the testimony?

15 THE COURT: Yes. I can't remember all of what he  
16 said or didn't say. Sometimes people say they have things and  
17 it turns out that they don't have them. But, in any event,  
18 with respect to the motion to compel discovery, the motion is  
19 granted in this respect.

20 The defendant shall have until December the 10th to  
21 produce any and all records within their possession or control  
22 responsive to the discovery request. Or failing that, to  
23 explain in detail the effort or efforts that were made to  
24 locate any such records in the event that the defendants  
25 ultimately claim that they have no records that are responsive.

1 In the event that the records do exist but for logistical or  
2 other reasons have not been or cannot be produced by December  
3 10th, I will preclude any proof on the issues that would have  
4 been generated in connection with those records. Specifically,  
5 the issue of an offset that the defendant is looking for.

6 Insofar as discovery is concerned, I'll extend  
7 discovery for 30 days through January 10th, and all the other  
8 timetables will move out accordingly. All right, that's it.

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10 (Whereupon, at 11:08 a.m., the proceedings were  
11 concluded.)

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C E R T I F I C A T E

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5 I, Ronald J. Bench, certify that the foregoing is a  
6 correct transcript from the record of proceedings in the  
7 above-entitled matter.

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Ronald J. Bench

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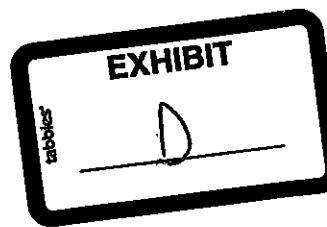
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Expense	Date Incurred	Date Paid	Entity Paid	Amount of Expense	Affiliation Allin Co/SMG	Comments
Duane Haataja Travel	11/1/2004	ATA		\$181.70	new hire	
Ground Transportation	11/1/2004		(picked up from Flits. Airport El Patio Motel	\$ 44.00 x 5 nights	new hire	PJ Short picked up
Hotel 11/1/04 - 11/6/04					new hire	
training 11/1/04 - 11/4/04					new hire	training @ SMG
Bryan Rohe Travel	10/31/2004		ATA/Southwest Anderson Airlink	\$221.70	new hire	
Transportation from Cleve - Erie	10/31/2004			\$25.00	new hire	trans fr hotel to SMG
Hotel 10/31/04 - 11/4/04				0	new hire	roomed w/ D Dziuban
training 11/2/04 - 11/4/04					new hire	training @ SMG
David Dziuban Travel	10/31/2004			\$102.60	new hire	
Transportation from Cleve - Erie	10/31/2004		Southwest Anderson Airlink	\$20.00	new hire	trans fr hotel to SMG
Hotel 10/31/04 - 11/4/04					new hire	training @ SMG
training 11/2/04 - 11/4/04					new hire	
Regional Manager-SPs, Site Reviews, Budgeting				\$ 44.00 x 5 nights		
Field manager-SPs, Site Reviews					new hire	
Field manager-SPs, Site Reviews					new hire	
Regional Manager-SPs, Site Reviews, Budgeting					new hire	
Regional Manager-SPs, Site Reviews, Budgeting					new hire	
Production-Site Visits, Production Maps					new hire	
Production-Production Maps & Binders					new hire	
Production-Number Calculations					new hire	
Production-SPs, Field Managers, Training, Budgeting					new hire	
Special Accounts Manager-Estimating, Point of Contact Info., Training					new hire	
					new hire -field manager	
					new hire -field manager	
					new hire -field manager	



Expense	Date Incurred	Date Paid	Entity Paid	Amount of Expense	Affiliation Allin Co/SMG	Comments
JV Travel expenses						

**Brian Marshall Travel expenses****Peggy Allin - Interviews**

Airfare	8/23/2004	Sun Country Airlines		\$129.10	same
Hotel	8/23/2004	8/25/2004 Courtyard Minneapolis-St. Paul Airport		\$149.00+Tax	same
Airfare	8/25/2004	Northwest Airlines		\$364.69	same
Meals 08/23/04-08/25/04	10/13-10/23	various	\$ 25.00 per diem x 3	\$ 1,037.60	same
Airfare	10/18/2004	United Airlines	\$ 64.99 + tax	\$ 64.99 + tax	same
Hotel	10/20/2004	10/20/2004 Comfort Inn - Denver	\$ 82.01 + tax	\$ 82.01 + tax	same
Hotel	10/21/2004	10/21/2004 Fairfield Inn & Suites - Minn/St. Paul	\$ 15.00	\$ 15.00	same
Taxi	10/22/2004		\$ 25.00 per diem x 6	\$ 25.00 per diem x 6	same
Hotel	10/22/2004	Radisson Hotel - Des Moines IA	\$ 99.00 + tax	\$ 99.00 + tax	same
Meals 10/18-10/23	10/18-10/23	various	\$ 25.00 per diem x 6	\$ 25.00 per diem x 6	same
Erie to Cleveland	10/25/2004	10/25/2004 Anderson Airlink	\$25.00	\$25.00	same
Cleveland to Chicago	10/25/2004	Continental	\$64.90	\$64.90	same
Hotel	10/25/2004	10/25/2004 Fairfield Inn Chicago	\$119.00+tax	\$119.00+tax	same
Ground trans. Cleveland to Erie	10/26/2004	John Allin	unknown	unknown	same
Duane Haataja Travel	11/1/2004	ATA	\$181.70	\$181.70	new hire
Ground Transportation	11/1/2004	(picked up from Pitts. Airport El Patio Motel	\$ 44.00 x 5 nights	\$ 44.00 x 5 nights	new hire
Hotel 11/1/04 - 11/6/04					new hire
training 11/2 - 11/4/04					new hire
Bryan Rohe Travel	10/31/2004	ATA/Southwest Anderson Airlink	\$221.70	\$221.70	new hire
Transportation from Cleve - Erie	10/31/2004	Hotel 10/31/04 - 11/4/04	\$25.00	\$25.00	new hire
training 11/2/04 - 11/4/04					0 new hire
David Dziluban Travel	10/31/2004	Southwest Anderson Airlink	\$102.60	\$102.60	new hire
Transportation from Cleve - Erie	10/31/2004	Hotel 10/31/04 - 11/4/04	\$20.00	\$20.00	new hire
training 11/2/04 - 11/4/04					new hire
Legal Council					
Supplies					
Labels			\$ 135.00	\$ 135.00	SMG
Business Envelopes			\$ 110.00	\$ 110.00	SMG
Manilla Envelopes			\$ 65.00	\$ 65.00	SMG
Paper			\$ 78.00	\$ 78.00	SMG
Postage			\$ 1,386.75	\$ 1,386.75	SMG
Copy Count			\$ 537.50	\$ 537.50	SMG
Faxing			\$ 125.00	\$ 125.00	SMG
Personnel		as of 11/8/04			
		sites entered in system	\$ 180.00	ops-audit - Beth	4 hours at \$ 45 per
		sites entered in system	\$ 180.00	ops.admin. Tima	4 hours at \$ 45 per
		phone calls	\$ 1,080.00	ops-audit - Beth	24 hours at \$45 per
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phone calls	1,080.00	ops-admin - Linda	24 hours at \$45 per
phone calls	1,080.00	ops-admin - Stacey	24 hours at \$45 per
phone calls	1,080.00	ops-admin - Tina	24 hours at \$45 per
rfp data entry	360.00	ops-admin - Linda	8 hours at \$ 45 per
rfp data entry	6,175.00	ops mgr - L. Edwards	65 hours @ \$ 95 per
Regional Manager-SPs, Site Reviews, Budgeting	3,800.00	mm - Smallwood	40 hours @ \$95 per
Field manager-SPs, Site Reviews	760.00	fm - J Casey	8 hours at \$95 per
Field manager-SPs, Site Reviews	950.00	fm - J. terrance	10 hours at \$95 per
Regional Manager-SPs, Site Reviews, Budgeting	9,500.00	mm - R Hrovat	100 hours at \$95 per
Regional Manager-SPs, Site Reviews, Budgeting	9,500.00	fm - R Santoro	100 hours at \$95 per
Production-Site Visits, Production Maps	2,375.00	prod coord - D. Gallagher	25 hours at \$95 per
Production-Production Maps & Binders	9,000.00	prod - T. Pancura	200 hours at \$45 per
Production-Number Calculations	5,200.00	prod - C. Zeigowski	80 hours at \$65 per
Production-SPs, Field Managers, Training, Budgeting	3,800.00	prod - R. Rieder	40 hours at \$95 per
Special Accounts Manager-Estimating, Point of Contact Info, Training	9,500.00	sac - B. Marshall	100 hours at \$95 per
Bus. Development	33,000.00	bus devel - J Vernon	200 hours at \$165 per
Bus. Development	22,500.00	bus devel - J Allin	100 hours at \$225 per
Human Resources	45,000.00	hr.r. - P Allin	200 hours at \$225 per
Accounting	1,140.00	accounting - M Sulecki	12 hours at \$95 per
new hire -field manager	9,500.00	Dave Dziljan, Chicago	100 hours at \$95 per
new hire -field manager	9,500.00	Ryan Rohe, Des Moines	100 hours at \$95 per
new hire -field manager	9,500.00	Duane Haataja, Minneapolis	100 hours at \$95 per

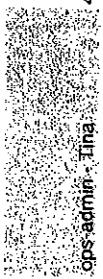
Expense	Date Incurred	Date Paid	Entity Paid	Amount of Expense	Affiliation to Allin Co/SMG	Comments
Flight to Ft. Lauderdale-John Allin	1/21/2004	1/21/2004	Northwest Airlines	233.9	same	
Flight to Ft. Lauderdale-Jeff Vernon	1/21/2004	1/21/2004	Northwest Airlines	207.9	same	
Airround Transportation	2/22/2004	2/22/2004			same	
Hotel -JA & JV	2/22/2004	2/22/2004	Harbor Beach Resort & Spa Marriott	\$0	same	\$319.00 paid by Heritage

Expense	Case 1:04-cv-00333-SJM	AMOUNT	TOTAL	Document 32-5
AIRFARE		\$ 129.10		
		\$ 364.69		
		\$ 1,037.60		
		\$ 64.90		
		\$ 181.70		
		\$ 221.70		
		\$ 102.60	\$ 2,102.29	
HOTEL		\$ 149.00		
		\$ 64.99		
		\$ 82.01		
		\$ 99.00		
		\$ 220.00		
		\$ 220.00	\$ 835.00	
FOOD		\$ 75.00		
		\$ 150.00		
		\$ 125.00		
		\$ 125.00		
		\$ 125.00	\$ 600.00	
GROUND		\$ 25.00		
		\$ 20.00		
		\$ 25.00	\$ 70.00	
TRANSP. TOTAL		\$ 2,102.29	\$ 3,478.19	
LABELS		\$ 135.00	\$ 135.00	
ENV		\$ 110.00		
		\$ 65.00	\$ 175.00	
PAPER		\$ 78.00	\$ 78.00	
POSTAGE		\$ 1,386.75	\$ 1,386.75	
COPIES		\$ 537.50	\$ 537.50	
FAXING		\$ 125.00	\$ 125.00	
SITE DATA ENTRY		\$ 180.00		
		\$ 180.00	\$ 360.00	
PHONE CALLS		\$ 1,080.00		
		\$ 1,080.00		
		\$ 1,080.00		
		\$ 1,080.00	\$ 4,320.00	
RFP DATA ENTRY		\$ 360.00		
		\$ 6,175.00	\$ 6,535.00	
MGMT/PRODUCTION		\$ 3,800.00		
		\$ 760.00		
		\$ 950.00		
		\$ 9,500.00		
		\$ 9,500.00		
		\$ 2,375.00		
		\$ 9,000.00		
		\$ 5,200.00		
		\$ 3,800.00		
		\$ 9,500.00		
		\$ 33,000.00		
		\$ 22,500.00		
		\$ 45,000.00		
		\$ 1,140.00		
		\$ 9,500.00		
		\$ 9,500.00		
		\$ 9,500.00	\$ 184,525.00	
SUPPLIES/PERSONNEL TOTAL			\$ 198,177.25	
GRAND TOTAL			\$ 201,655.44	

Expense	Date Incurred	Date Paid	Entity Paid	Amount of Expense	Affiliation Allin Co/SMG	Comments
<b>JV Travel expenses</b>						
<u>Brian Marshall Travel expenses</u>						
Peggy Allin - Interviews						
Airfare	8/23/2004		Sun Country Airlines	\$129.10	same	
Hotel	8/23/2004	8/25/2004	Courtyard Minneapolis-St. Paul Airport	\$149.00+Tax	same	
Airfare	8/25/2004		Northwest Airlines	\$364.69	same	
Meals	08/23/04-0825/04	10/18-10/23	various	\$ 25.00 per diem x 3	same	
Airfare	10/18/2004		United Airlines	\$ 1,037.60	same	
Hotel	10/20/2004	10/20/2004	Comfort Inn - Denver	\$ 64.99 + tax	same	
Hotel	10/21/2004	10/21/2004	Fairfield Inn & Suites - Minn/St. Paul	\$ 82.01 + tax	same	
Taxi	10/22/2004			\$15.00	same	
Hotel	10/22/2004		Radisson Hotel - Des Moines IA	\$ 99.00 + tax	same	
Meals	10/18-10/23	10/18-10/23	various	\$ 25.00 per diem x 6	same	
Erie to Cleveland	10/25/2004	10/25/2004	Anderson Airlink	\$25.00	same	
Cleveland to Chicago	10/25/2004		Continental	\$64.90	same	
Hotel	10/25/2004	10/25/2004	Fairfield Inn Chicago	119.00+tax	same	
Ground trans. Cleveland to Erie	10/26/2004		John Allin	unknown	same	
					personal or company?	
<u>Duane Hatata Travel</u>						
Ground Transportation	11/1/2004		ATA	\$181.70	new hire	
Hotel 11/1/04 - 11/6/04	11/1/2004		(picked up from Pitts. Airport	new hire		
training 11/2 - 11/4/04			El Patio Motel	\$ 44.00 x 5 nights	new hire	
<u>Bryan Rohe Travel</u>						
Transportation from Cleve - Erie	10/31/2004		ATA/Southwest	\$221.70	new hire	
Hotel 10/31/04 - 11/4/04	10/31/2004		Anderson Airlink	\$25.00	new hire	
training 11/2/04 - 11/4/04			0	\$102.60	new hire	
<u>David Dzuban Travel</u>						
Transportation from Cleve - Erie	10/31/2004		Southwest	\$20.00	new hire	
Hotel 10/31/04 - 11/4/04	10/31/2004		Anderson Airlink	\$ 44.00 x 5 nights	new hire	
training 11/2/04 - 11/4/04				new hire		
<u>Legal Council</u>						
Supplies						
Labels				\$ 135.00	SMG	
Business Envelopes				\$ 110.00	SMG	
Manilla Envelopes				\$ 65.00	SMG	
Paper				\$ 78.00	SMG	
Postage				\$ 1,386.75	SMG	
Copy Count				\$ 537.50	SMG	
Faxing				\$ 125.00	SMG	

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John Allin		
Date	Tasks	Hours
2/18/2004	Preparation of presentation in FL	10
02/22-02/24/04	Trip to present SMG to Heritage	48
04/15-04/27/04	gather update info from Jeff, Brian, Rudy & Chet	4
06/07-06/09/04	Work with Brian & Jeff to align pricing	8
08/19-08/26/04	Correspondence with SP's in MN to do sites	2
09/30-10/04/04	Review & amend contract & SP Agreement	8
10/8-10/09/04	Review & initial revised contract	2
10/26-10/28/04	Several meetings on training of new FM's & contacting all Property Mgr's	8
10/29-11/04/04	Finalize & approve all FM's responsibilities for all sites & corresponding Property Mgr's	10
		100
Jeff Vernon		
Date	Tasks	Hours
02/16-02/19/04	Preparation of presentation in FL	20
02/22-02/24/04	Trip to present SMG to Heritage	48
5/23/2004	Meeting w/Bob P in Las Vegas - negotiations	2
06/07-06/09/04	Work with John & Brian to align pricing	10
6/16/2004	Trip to Boston w/Mike Smallwood to meet with Bob P	8
9/20/2004	Trip to Rutland, VT to measure site and get SP	16
8/2/2004	Conference Call Heritage/SMG - moving forward	2
08/03-08/05/04	Follow up work from conference call - due diligence	10
10/4-10/09/04	Travel to Erie to work with Production Crew to complete sites, equipment, SP's, maps, etc.	60
10/11-10/15/04	Working on bid sheets, sites, SP's, production, equipment	10
10/21-10/22/04	Meetings in Erie - finalize info for RFPS to go out	4
10/29-11/04/04	Finalize & approve all FM's responsibilities for all sites & corresponding Property Mgr's	10
		200



180.00 ops-admin - Linda 4 hours at \$ 45 per

\$

1,080.00 ops-audit - Beth 24 hours at \$45 per

\$

phone calls

sites entered in system

1,080.00 ops-admin - Linda 24 hours at \$45 per

\$

Phone calls

1,080.00 ops-admin - Stacey 24 hours at \$45 per

\$

Phone calls

phone calls	\$ 1,080.00	ops-admin - Tina	24 hours at \$45 per
rfp data entry	\$ 360.00	ops-admin - Linda	8 hours at \$ 45 per
Regional Manager-SPs, Site Reviews, Budgeting	\$ 6,175.00	ops mgr - L. Edwards	65 hours @ \$ 95 per
Field manager-SPs, Site Reviews	\$ 3,800.00	fm - Smallwood	40 hours @ \$35 per
Field manager-SPs, Site Reviews	\$ 760.00	fm - J Casey	8 hours at \$95 per
Regional Manager-SPs, Site Reviews, Budgeting	\$ 950.00	fm - J. terrace	10 hours at \$95 per
Regional Manager-SPs, Site Reviews, Budgeting	\$ 9,500.00	fm - R. Hrovat	100 hours at \$95 per
Production-Site Visits, Production Maps	\$ 9,500.00	fm - R. Santoro	100 hours at \$95 per
Production-Production Maps & Binders	\$ 2,375.00	prod coord- D. Gallagher	25 hours at \$95 per
Production-Number Calculations	\$ 9,000.00	prod - T. Pancura	200 hours at \$45 per
Production-SPs, Field Managers, Training, Budgeting	\$ 5,200.00	prod - C. Zeigowski	80 hours at \$65 per
Special Accounts Manager-Estimating, Point of Contact Info., Training	\$ 3,800.00	prod - R. Rieder	40 hours at \$95 per
Bus. Development	\$ 9,500.00	sec - B. Marshall	100 hours at \$95 per
Bus. Development	\$ 33,000.00	bus devel - J. Vernon	200 hours at \$165 per
Bus. Development	\$ 22,500.00	bus devel - J. Allin	100 hours at \$225 per
Human Resources	\$ 45,000.00	h.r. - P. Allin	200 hours at \$225 per

\$ 1,140.00	accounting - M. Suleski	12 hours at \$95 per
\$ 9,500.00	Dave Dzuban	Chicago 100 hours at \$95 per
\$ 9,500.00	Bryan Rohe	Des Moines 100 hours at \$95 per
\$ 9,500.00	Duane Haetjens	Minneapolis 100 hours at \$95 per

Accounting  
new hire -field manager  
new hire -field manager  
new hire -field manager

data enter some of  
the 110 sites into  
10/20/2004 PAMS

4

Calls to prospective  
bidders and/or calls  
to confirm receipt of  
RFP package

24

Calls to and from  
prospective bidders  
re: confirmation of  
SPs to receive RFP  
packets, calls to SP  
to confirm receipt of  
RFP package, site  
specific questions  
re: scope of work,  
follow up calls  
regarding Symbiot  
not responsible for  
contract

24

Calls to and from  
prospective bidders  
re: confirmation of  
SPs to receive RFP  
packets, calls to SP  
to confirm receipt of  
RFP package, site  
specific questions  
re: scope of work,  
follow up calls  
regarding Symbiot  
not responsible for  
contract

24

9/14/04 - 11/17/04

9/14/04 - 11/17/04

Calls to and from prospective bidders  
re: confirmation of SPs to receive RFP  
packets, calls to SP to confirm receipt of RFP package, site specific questions re: scope of work, follow up calls regarding Symbiot not responsible for contract

9/14/04 - 11/17/04

24

develop process re: software functionality to data enter Heritage account information and locations into 10/20/2004 PAMS

8

develop process re: data entry of Heritage sites, SP proposals numbers, valid services, snowfall inches relative to scope for all Heritage account information and locations into PAMS

65

10/20/2004 - 11/11/04

## Dates Hours Reason

June 17,2004 4.00 Search internet for local newspapers in various cities needed; contacting newspapers to gather info placing ads; present pricing to JA for approval to place ads

June 17 or 18th 3.00 Fax ads to various newspapers, confirmation and requesting/receiving tear sheets

Ist of July 4.00 Separate resumes by state, put in excel documents for review, review resumes w/JA to start interview process

July/August 4.00 Sending e-mails for initial introduction to determine if good candidate to interview

8/23/2004 thru 08/25/04 48.00 Travel to MN for interviewing/interviewing time  
8 hrs Interviews on 24th

09/30/2004 thru 10/01/04 3.00 Fax ads to various newspapers, confirmation and requesting/receiving tear sheets

10/07/04 thru 10/08/04 4.00 Separate resumes by state, put in excel documents for review, review resumes w/JA & JV to start interview process

10/11/04 thru 10/15/04 25.00 Call Center personnel training

10/21/04-10/23/04 48.00 Travel to MN to IA for interviewing  
(Interviews in IA were from 12 noon until 8 PM), 12 hrs on 22; 8 hr ea for 20/21  
Interviews on 23rd were 7 AM until 11 AM then travel home

10/25/04-10/26/04 27.00 Traveled to Chicago for interviews - went out of Cleveland, took Airlink at 4:30 AM  
(Est 15 hours on the 25th; est another 12 hours on 26th, interviews started at 7 am

10/27/04-10/29/04 10.00 Job offers made, confirmation of travel arrangements, preparation of binders;

10/29/2004 1.00 Order trucks for new hires and coordinate with Rudy

10/29/2004 -10/31/04 3.00 notifying staff of agendas; first day binders, policies, insurance info

10/31/2004 3.00 Dinner w/David Dziuban, Bryan Rohe, JA @ Colony Restaurant

11/01/04-11/03/04 10.00 Training w/new hires

11/8/2004 3.00 Setup employee folders

200.00

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HERITAGE REALTY MANAGEMENT, )  
INC., )  
Plaintiff )  
)  
v. ) CIVIL ACTION NO. 04-333 ERIE  
)  
JOHN ALLIN d/b/a ALLIN )  
COMPANIES and SNOW MANAGEMENT )  
GROUP, )  
Defendant )

HEARING ON MOTION TO EXCLUDE EVIDENCE OF  
ALLEGED TIME AND EXPENSE/SETOFFS

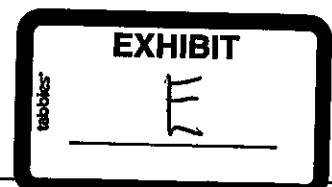
Proceedings held before the HONORABLE  
SEAN J. McLAUGHLIN, U.S. District Judge,  
in Courtroom C, U.S. Courthouse, Erie,  
Pennsylvania, on Wednesday, January 11, 2006.

APPEARANCES:

NEAL R. DEVLIN, Esquire, appearing on behalf of  
the Plaintiff.

CRAIG A. MARKHAM, Esquire, appearing on behalf  
of the Defendant.

Ronald J. Bench, RMR - Official Court Reporter



1

PROCEEDINGS

2

3 (Whereupon, the proceedings began at 1:30 p.m., on  
4 Wednesday, January 11, 2006, in Courtroom C.)

5

6 THE COURT: We have a motion to exclude evidence of  
7 alleged time and expense/setoffs. Why isn't this a weight  
8 issue?

9 MR. DEVLIN: Your Honor, the reason we filed the  
10 motion and why we believe it's not a weight issue is based upon  
11 how we've come to this point. Not to rehash, please feel free  
12 to cut me off, but as you will recall, there was some initial  
13 discovery, we had a settlement conference with you, at which  
14 Mr. Allin was present. During that conference the focus was on  
15 the expenses that he's claiming are a setoff to the amount  
16 Heritage has paid him. We explained that we had summaries  
17 based upon that. There is a whole box of documents, but the  
18 majority of them are these requests for proposals. So it's  
19 really the supplement. And he indicated he thought there was  
20 other source documentation he was going to get --

21 THE COURT: That would substantiate the amount of  
22 setoffs that were being claimed?

23 MR. DEVLIN: Correct, your Honor. We then went  
24 through -- and he was going to get those to us in a certain  
25 period of time, there was an extension, then a motion to

1 compel. During that argument on the motion to compel, though  
2 Mr. Lanzillo was here, where it was discussed the possibility  
3 that if those documents existed, but they weren't produced,  
4 there would be a sanction in the exclusion of all evidence.

5 THE COURT: In other words, I went back and read it.  
6 What I was trying to prevent from happening, in the event they  
7 said we don't have them and all of a sudden they show up at  
8 trial, as a sanction I was going to preclude the proof.

9 MR. DEVLIN: Okay. Correct, your Honor, that's how  
10 I understood your order as well.

11 THE COURT: But not to interrupt you -- in other  
12 words, I actually say in there they can't be faulted for not  
13 producing what they don't have. They now say they've made a  
14 search and don't have it. Your position, I take it, remains  
15 that as a factual matter, may cast even additional doubt as to  
16 whether it can be substantiated. But it isn't clear what you  
17 want me to do right now?

18 MR. DEVLIN: And, your Honor, here's why we filed  
19 the motion and what we'd like you to do right now. I do agree,  
20 your Honor, that your order was that if the documents did not  
21 exist and they would be required to rely upon their testimony,  
22 there would not be an overarching sanction of producing what  
23 you don't have. Here's the problem we had when we received the  
24 records. The records are a very similar summary. But a couple  
25 of them, specifically with request to Mr. Allin, Mr. Vernon,

1 and at least two or three other unidentified people, have a  
2 more specific break out of time. The original records just  
3 show a block of time, 200 hours. Then you have a more specific  
4 break out for -- let's take Mr. Vernon, for example. There is  
5 no -- clearly something that led to that more specific break  
6 out. But we don't know what that is. If it is going to be  
7 testimony, we noticed the deposition of Mr. Vernon, but were  
8 told -- by Mr. Markham, we just had actually a conversation  
9 about it, has been in conversation with him, but he's not in a  
10 position to produce him. It appears he's in Connecticut.

11 THE COURT: He's no longer an employee?

12 MR. DEVLIN: Yes, apparently all of the individuals  
13 who were noticed are no longer employees.

14 THE COURT: Let me just interrupt -- Mr. Markham,  
15 did I see in the paper was the company sold?

16 MR. MARKHAM: It was sold and Mr. Allin was fired,  
17 yes.

18 THE COURT: So we're even farther down the road now.

19 MR. MARKHAM: Unfortunately.

20 THE COURT: Well, we'll talk about the upshot of  
21 that in a minute.

22 MR. DEVLIN: And, your Honor, the problem we now  
23 have is that there is this more specific break out as to some  
24 individuals --

25 THE COURT: Is there still an Allin Companies, is it

1 still called Allin Companies, do you know?

2 MR. MARKHAM: There is a local outfit still called  
3 Allin Companies, principally doing local landscaping and local  
4 snow removal.

5 THE COURT: All right.

6 MR. MARKHAM: Allin Companies is a fictitious name  
7 of Snow Management Group.

8 THE COURT: So, anyway, getting back to the point  
9 here.

10 MR. DEVLIN: Your Honor, with respect to every one  
11 on there, other than John and Peggy Allin, we have noticed  
12 depositions. Not everybody on that list, but those people that  
13 sort of had a big chunk of time. We've been told that Mr.  
14 Allin is not in a position to produce those people for us to  
15 depose. So we are then left back in the very position that  
16 your Honor, we believe, had contemplated in that motion to  
17 compel, that we have a summary of information, we don't have  
18 any original source documentation. And as to testimonial  
19 support for it, we've now been informed we're not able to get  
20 the depositions, absent tracking these people down and  
21 subpoenaing them, if they're even appearing within this  
22 jurisdiction. So it's for that reason that we're asking at  
23 this point in time --

24 THE COURT: Well, let me ask you this. There are  
25 some people, John Allin and his wife, who are around here and

1 who are available to be deposed, correct?

2 MR. DEVLIN: Correct, your Honor.

3 THE COURT: I take it that their work, in part,  
4 according to the defendant's theory, represents a portion of  
5 the setoff claimed?

6 MR. DEVLIN: Yes, your Honor.

7 THE COURT: These other two or three individuals who  
8 are no longer -- obviously, they're not employees, the company  
9 has been sold, but who are no longer around here and subject to  
10 Mr. Markham's control, do you know where they are?

11 MR. DEVLIN: I don't, your Honor. I know that Mr.  
12 Markham has spoken to Jeff Vernon in Connecticut. As to the  
13 other individuals, I don't know where they are. And I'll let  
14 Mr. Markham speak as to whether he knows or not. But I have  
15 not been told where they are.

16 THE COURT: Well, were more specific time records as  
17 to these individuals supplied but without what you feel is the  
18 supporting documentation?

19 MR. DEVLIN: As to Jeff Vernon, yes. As to Jeff  
20 Vernon, we originally had a block of time. We now have a break  
21 out of dates, and we don't know where that is coming from. And  
22 there are other -- your Honor, I won't pull it out now, with  
23 the format it's difficult to tell where the break off is.  
24 There are two, possibly three other summaries that don't  
25 indicate the individual's name, but indicate a more specific

1 break out of time. So we don't even know who those individuals  
2 are. But it's pretty clear that they're not John Allin or  
3 Peggy Allin. So we're stuck in a position where we have an  
4 expense claim, no source documentation to support it and no  
5 ability to delve into testimony of these people supposedly that  
6 did the work. For that reason we're asking, your Honor --

7 THE COURT: Still at time of trial it's going to be  
8 their burden to substantiate it. I mean, why is this different  
9 than -- why isn't this a garden-variety situation that often  
10 happens, where people who are employees no longer are, and you  
11 got to go -- in this case the defendant, but attempting to  
12 establish a counterclaim, which he's functionally the  
13 plaintiff, needs to either go track him down and wheel him in  
14 or suffer the consequences. What are you worried about?

15 MR. DEVLIN: Your Honor, in all candor I do agree  
16 that if our motion is denied, we'll probably be back up here on  
17 a motion in limine or something along those lines prior to  
18 trial at the close of discovery. What we're worried about now  
19 is as the sequence of this has come, there have been  
20 representations made by Mr. Allin that these things existed.  
21 He's produced a summary of records that must be based upon  
22 something. Now, discovery actually closes today, which is  
23 something I know, I'm sure Mr. Markham and I want to discuss  
24 with the court as well. But we're at the close of discovery,  
25 we have none of the source documentation that we asked for, and

1 we've been told the individuals who we are planning on deposing  
2 are not, they can't produce those individuals. So we don't  
3 know, quite frankly, what we're going to be hit with  
4 afterwards. And I'm not saying, I don't think anyone is trying  
5 to hide anything from us, but at this point in time discovery  
6 is nearing an end, there is no support for any of this. Now,  
7 based upon what happened at the motion to compel, that's why we  
8 phrased it as a motion to exclude. But I do agree with your  
9 Honor that if the court denies that motion, I'll be back here  
10 making a very similar argument on a motion in limine.

11 THE COURT: Isn't the time to make a motion in  
12 limine at trial -- I mean by that time we will know, because of  
13 the passage of time that will have gone by, who was deposed,  
14 what happened, who's on the witness list, that's all in the  
15 future?

16 MR. DEVLIN: I agree, your Honor. The reason we  
17 filed the motion and did not wait for that is based upon the  
18 representations Mr. Allin made and how this came about.

19 THE COURT: All right, let me talk to Mr. Markham  
20 for a minute. Give me your position in a nutshell here?

21 MR. MARKHAM: Well, it's simply this. In response  
22 to the specific motion for sanctions, it's clear we produced  
23 everything we could find. Mr. Allin, when he was here, had  
24 indicated that he thought the records existed. He was  
25 incorrect, he searched and his staff has searched, and only

1 found one other document, a multi-page document, which has been  
2 produced and given to plaintiff's counsel. Which is a summary,  
3 much like the previous summaries given. It was created a long  
4 ago, it wasn't created recently, which provides information  
5 which came from, basically, my client's review and  
6 recollections of what had transpired. There are no other  
7 records of a source nature or really anything that's responsive  
8 to their requests --

9 THE COURT: Would it be accurate to say in general,  
10 that the time summaries that had been supplied, the hours  
11 worked, what was done, were the creation of a collective  
12 memory, as opposed to any hard documentation?

13 MR. MARKHAM: For the most part, that's correct.  
14 There are some documents that we were going off of, like  
15 airplane ticket receipts, things of that nature, which kind of  
16 placed them in time for certain events. But for the most part,  
17 besides that --

18 THE COURT: It was a reconstruction by memory?

19 MR. MARKHAM: By memory.

20 THE COURT: Doesn't that tell you a lot right there,  
21 I mean it's a reconstruction by memory. It may not be the best  
22 way to try to prove your case but it's a weight issue, isn't  
23 it?

24 MR. DEVLIN: And, your Honor --

25 THE COURT: If that's all there is, that's all there

1 is?

2 MR. DEVLIN: I agree, your Honor. However, if it's  
3 a collective memory, the only people who apparently we're going  
4 to be able to depose are Mr. Allin and Mrs. Allin, I'd like to  
5 know if there's anyone else in that collection.

6 THE COURT: Well, we're looking down the road,  
7 but -- if this thing keeps jumping along toward trial, what  
8 about these other individuals that are all spread into the four  
9 winds, are you going to bring them in to substantiate your  
10 claims?

11 MR. MARKHAM: I don't think so. The memories we're  
12 talking about are the memories of the people here. We didn't  
13 talk to --

14 THE COURT: In other words, Mr. and Mrs. Allin, if  
15 you will, not only reconstructed their own time, but based on  
16 their personal observations, if you will, reconstructed the  
17 other folk's time, is that right?

18 MR. MARKHAM: That's correct.

19 THE COURT: That's how the case would come on, it's  
20 not your intention to bring these people in as live witnesses  
21 in support of your setoff claim, is that right?

22 MR. MARKHAM: I think that's correct. The only  
23 potential witness will be Jeff Vernon, only because he was more  
24 intimately involved in some of the preparation work. But  
25 beyond that, even that's speculation.

1                   THE COURT: Is he the fellow who's in Connecticut?

2                   MR. MARKHAM: He's in Connecticut. I had indicated  
3 to Mr. Lanzillo that all of these people are not within our  
4 control, if he wanted, we could try to contact them or act as a  
5 liaison.

6                   THE COURT: But if you're not going to bring them  
7 in, I don't see the point of anybody going off to depose them.

8                   MR. MARKHAM: Well, that was up to him. I just said  
9 if he wanted to do that, we'd try to help him.

10                  THE COURT: All right, let me do a quick order and  
11 then I want to talk to you about a few things. This an order.

12                  ORDER

13                  With respect to the Motion to Exclude Evidence of  
14 Alleged Time and Expense/Setoffs, based upon the discussion  
15 we've had here today, the motion is denied.

16                  Now, let's go off the record.

17                  (Discussion held off the record.)

18                  THE COURT: We're back on the record, what about  
19 discovery?

20                  MR. DEVLIN: Well, your Honor, we have depositions  
21 scheduled right now. I think the discovery cutoff is today or  
22 tomorrow.

23                  MR. MARKHAM: I think it's today.

24                  MR. DEVLIN: Given this motion, we had held off on  
25 deposing Mr. and Mrs. Allin because we didn't know what we

1 would be inquiring into. We now have their depositions  
2 scheduled, I believe for the 21st and 23rd now or something  
3 around there. And Craig has depositions scheduled immediately  
4 before that by video. So what I was going to request, your  
5 Honor, would be a 20-day extension of all deadlines. I think  
6 that would accommodate what we were planning on doing.

7 THE COURT: All right. Does that wrap up yours,  
8 too?

9 MR. MARKHAM: I believe it will. I'm expecting two  
10 witnesses that I want to depose, would be in the universe of  
11 people I need to speak to.

12 THE COURT: Is there going to be summary judgment  
13 filed in this case?

14 MR. DEVLIN: I believe there will be, your Honor, I  
15 think we will.

16 THE COURT: All right. We'll extend discovery for  
17 20 days, all other relevant scheduling dates are moved  
18 accordingly.

19 (Discussion held off the record.)

20

21 (Whereupon, at 1:46 p.m., the proceedings were  
22 concluded.)

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1 C E R T I F I C A T E  
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4 I, Ronald J. Bench, certify that the foregoing is a  
5 correct transcript from the record of proceedings in the  
6 above-entitled matter.

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11 Ronald J. Bench

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